**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO.235 OF 2007

Central Bureau of Investigation ]
Anti-Corruption Branch, ]
Tanna House, 11-A, N.P.Marg, ]
Colaba, Mumbai. ] ..PETITIONER.

Versus

1. Shri.Devendra S. Doctor, ]
C/2, Ground Floor, ]
Sonawala Building, ]
Tardeo, Mumbai-400 007. ]

2. The State of Maharashtra. ] ..RESPONDENTS.

..

Mr.R.B.Raghuwanshi, A.S.G. with S.Bhattacharya, Spl.P.P./CBI, i/b. Manoranjan Sahu, for the Petitioner.

Mrs.A.S.Pai, Adv. appointed as ammicus curie.

Respondent No.1 present in-person.

Mr.M.S.Mhambre, APP, for the State.

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**CORAM : R.M.S.KHANDEPARKAR AND SMT.V.K.TAHILRAMANI,JJ.**

**DATED : SEPTEMBER 03, 2007.**

**ORAL JUDGMENT : (PER R.M.S.KHANDEPARKAR,J.)**

1. Heard. Rule. By consent, the rule is made returnable forthwith. The respondent No.1 in person and learned APP waives service.

2. The only point which is sought to be raised in the matter is that the Judicial Magistrate is not empowered to direct the CBI to investigate into the matter. In that regard reliance is sought to be placed in the decision in the matter of **Central Bureau of Investigation Vs. State of Rajasthan and Another, (2001) 3 Supreme Court Cases 333** and **Surendra Nath Swain Vs. State of Orissa & Ors., 2006 Cri.L.J.462**. The original complainant-respondent No.1 herein who is appearing in person however stated that the said decisions are in relation to section 156(3) of Criminal Procedure Code, whereas the impugned order has been passed in exercise of powers under Section 202 of the said Code. He has further submitted that the expression "such other person" appearing in Section 202 of Criminal Procedure Code clearly empowers the Magistrate to direct investigation by CBI as the said expression would include CBI.

3. The Apex Court in the decisions which are sought to be relied upon on behalf of the

petitioner has clearly ruled that the Magistrate exercising power under the Code to direct the investigation by the police authorities is not empowered to direct the investigation by CBI. In Paragraph 12 of the decision in the State of Rajasthan's case (supra) it has been ruled thus :-

> 12. In a decision rendered by the Kerala High Court the complaint was forwarded by a Magistrate to the Inspector General of Police (Crimes) for investigation under Section 156(3) of the Code. When the State challenged the said order of the Magistrate the High Court held that a Magistrate cannot order any police officer, other than one who is in charge of a police station to conduct the investigation, though the Government in exercise of their executive powers can authorise any superior police officer to investigate a case and such

> direction can be issued by the higher officer to his subordinate officer in the police department. The said decision is reported in *State of Kerala v. Kolakkacan Moosa Haji*. A two-Judge Bench of this Court (G.N. Ray and G.B. Pattanaik, JJ.) has affirmed the said decision of the Kerala High Court as per order dated 8-4-1997 in Criminal Appeal No.410 of 1994. The principle involved in the said case would as well be applicable when the Magistrate is approached to direct CBI for conducting investigation."

4. The decision of the Apex Court is very clear on the point of law that the Magistrate cannot ask CBI to investigate into an offence. Though the decision was delivered in a case where the Magistrate had sought to refer the matter for investigation under Section 156(3) of the Code; nevertheless it was in relation to "investigation" and in exercise of powers of

Magistrate to order investigation. Being so, whether such power is exercised under Section 156(3) or 202(1) of the Code, it will not make any difference.

5. Section 202(1) of Criminal Procedure Code provides that any Magistrate on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under section 192, may, if he thinks fit, postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding. In other words, even under Section 202(1) the order would be for the purpose of "investigation". The decision of the Apex Court is undoubtedly on the point of power of Magistrate to order investigation by the police authorities.

6. Besides Section 192 of the Code deals with

the power of the Chief Judicial Magistrate to make over a case in terms of sub-section (1). Any Chief Judicial Magistrate may, after taking cognizance of an offence, make over the case for inquiry or trial to any competent Magistrate subordinate to him. Sub-section (2) thereof provides for any Magistrate of the first class empowered in this behalf by the Chief Judicial Magistrate may, after taking cognizance of an offence, make over the case for inquiry or trial to such other competent Magistrate as the Chief Judicial Magistrate may, by general or special order, specify, and thereupon such Magistrate may hold the inquiry or trial. Section 12(1) of the Code provides that in every district (not being a metropolitan area), the High Court shall appoint a Judicial Magistrate of the first class to be the Chief Judicial Magistrate. Section 12(3)(b) provides that subject to the general control of the Chief Judicial Magistrate, every sub-divisional Judicial Magistrate shall also have and exercise, such powers of supervision and control over the work of the Judicial Magistrate (other than Additional Chief Judicial

Magistrate) in the sub-division as the High Court may, by general or special order, specify in that behalf. Section 14(1) of the Code provides that subject to the control of the High Court, the Chief Judicial Magistrate may, from time to time, define the local limits of the areas within which the Magistrates appointed under section 11 or under section 13 may exercise all or any of the powers with which they may respectively be invested under this Code provided that the Court of a Special Judicial Magistrate may hold its sitting at any place within the local area for which it is established. Sub-section 2 thereof provides that except as otherwise provided by such definition, the jurisdiction and powers of every such Magistrate shall extend throughout the district.

7. Reading the above provisions of law, it would also be clear that the power which has been provided for the Judicial Magistrate under Section 202 of the Code to order investigation relates to the area within which he can exercise

his jurisdiction and obviously, therefore, the direction to investigate can be to the police officers and such other persons who can be subjected to his jurisdiction.

8. Considering the above provisions of law, and as CBI cannot be said to be within the jurisdiction of the Magistrate, therefore, and bearing in mind the decision of the Apex Court in the case relied upon on behalf of the petitioner, it is clear that the Magistrate does not enjoy any jurisdiction under the Code to refer a matter for investigation by CBI. Viewed from this angle, therefore, the impugned order is not sustainable and is liable to be set-aside. The Petition, therefore, succeeds and is accordingly allowed. The impugned order is hereby quashed. The rule is made absolute in above terms, with no order as to costs.

[R.M.S.KHANDEPARKAR,J.]

[SMT.V.K.TAHILRAMANI,J.]